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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/812,489	03/30/2004	Joseph Sproules	34758	3258
7590 HOVEY WILLIAMS LLP Suite 400 2405 Grand Blvd. Kansas City, MO 64108-2519		10/18/2007	EXAMINER GILBERT, WILLIAM V	
			ART UNIT 3635	PAPER NUMBER
			MAIL DATE 10/18/2007	DELIVERY MODE PAPER

**Please find below and/or attached an Office communication concerning this application or proceeding.**

The time period for reply, if any, is set in the attached communication.

<b>Office Action Summary</b>	<b>Application No.</b> 10/812,489	<b>Applicant(s)</b> SPROULES, JOSEPH	
	<b>Examiner</b> William V. Gilbert	<b>Art Unit</b> 3635	

**-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --**

**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

- 1) ☒ Responsive to communication(s) filed on 07 August 2007.
- 2a) ☒ This action is **FINAL**.                      2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

- 4) ☒ Claim(s) 1-35 is/are pending in the application.
- 4a) Of the above claim(s) 27 is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-17, 19-26, 28-35 is/are rejected.
- 7) ☒ Claim(s) 18 is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

**Application Papers**

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
     Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
     Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

**Priority under 35 U.S.C. § 119**

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All    b) ☐ Some \* c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

**Attachment(s)**

- |   |  |
|---|--|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892)                                 | 4) <input checked="" type="checkbox"/> Interview Summary (PTO-413)<br>Paper No(s)/Mail Date. <u>07 June 2007</u> . |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)                        | 5) <input type="checkbox"/> Notice of Informal Patent Application  |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08)<br>Paper No(s)/Mail Date _____. | 6) <input type="checkbox"/> Other: _____.  |

**DETAILED ACTION**

This is a Final Office Action. Claims 1-35 are pending.

***Election/Restrictions***

1. Newly amended Claim 27 is directed to an invention that is independent or distinct from the invention originally claimed for the following reasons: the stop member has been broadened to include species not in the original claims as presented.

Since applicant has received an action on the merits for the originally presented invention, this invention has been constructively elected by original presentation for prosecution on the merits. Accordingly, Claim 27 is withdrawn from consideration as being directed to a non-elected invention. See 37 CFR 1.142(b) and MPEP § 821.03.

***Claim Rejections - 35 USC § 103***

2. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negatived by the manner in which the invention was made.

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The factual inquiries set forth in *Graham v. John Deere Co.*, 383 U.S. 1, 148 USPQ 459 (1966), that are applied for establishing a background for determining obviousness under 35 U.S.C. 103(a) are summarized as follows:

1. Determining the scope and contents of the prior art.
2. Ascertaining the differences between the prior art and the claims at issue.
3. Resolving the level of ordinary skill in the pertinent art.
4. Considering objective evidence present in the application indicating obviousness or nonobviousness.

**Claims 1-4** are rejected under 35 U.S.C. 103(a) as being unpatentable over Drake (U.S. Patent No. 6,484,469).

Claim 1: Drake discloses an adjustable pier (Fig. 1) having a lower support member (104, 124) defining an internal chamber (114), an upper support member (106) received in the chamber, the upper support member is shiftable relative to the lower support member, and the lower support member has an opening (120) for lateral access to the chamber from outside the lower support member, the internal chamber receives the upper support member (106). While the opening has a height (see "A" from attached Figure 1 from Drake, below), Drake does not disclose that the height is at least 50% of the maximum height of the upper support member (note that the height of the upper support is the distance from proximate 118 to 150). It would have been

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obvious at the time the invention was made to a person having ordinary skill in the art as a matter of design choice to have this limitation because Applicant did not state a criticality for the necessity of this limitation and the prior art of record is capable of being designed to meet the limitation as claimed.

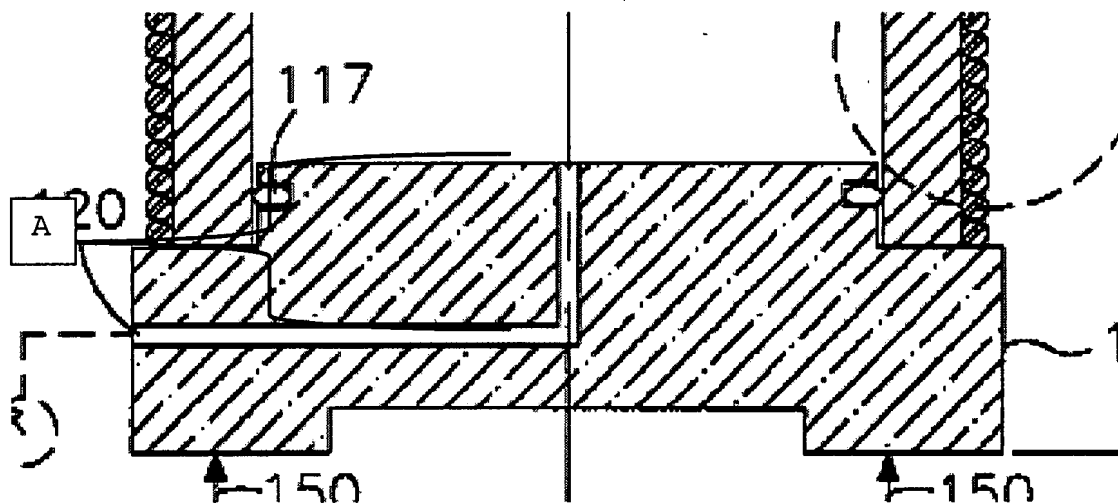


Figure 1. from Drake

Claim 2: the upper and lower support members are telescopically intercoupled.

Claim 3: Drake discloses the claimed invention except for the height of the opening. It would have been obvious at the time the invention was made to a person having ordinary skill in the art as a matter of design choice to have the height of the opening as claimed because Applicant did not state a criticality

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for the necessity of the invention and the prior art of record is capable of meeting the limitation as claimed.

Claim 4: Drake discloses a stop member (116) being disposed between the upper and lower members and below the bottom of the upper member, and the stop member is in the internal chamber.

**Claims 5 and 6** are rejected under 35 U.S.C. 103(a) as being unpatentable over Drake in view of Hebant (U.S. Patent No. 5,516,237).

Claim 5: Drake discloses the claimed invention except that the stop member is a cured grout, though the stop member can be a number of items from fluids to sand, to any substance based on the specific parameters (Col. 5, lines 30-49). Hebant discloses an adjustable pier system where the stop member (18) is a grout (Col.4 lines 20-25 where cement and mortar are types of grout). It would have been obvious at the time the invention was made to a person having ordinary skill in the art to use grout with the pier system in Drake in order to permanently set the adjustable pier and the disclosure in Drake permits a number of materials to be used based on the circumstances.

Claim 6: the grout would fill the entire internal chamber.

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**Claims 7-9** are rejected under 35 U.S.C. 103(a) as being unpatentable over Drake in view of Zimmerman (U.S. Patent No. 6,494,005).

Claim 7: Drake discloses the claimed invention except that one of the upper and lower support members has a projection and the other member has a groove to receive a portion of the projection. Zimmerman discloses an adjustable pier (Fig. 1) where the lower portion has a laterally extending projection (15) and the upper portion has a groove (portion that receives 15). It would have been obvious at the time the invention was made to a person having ordinary skill in the art to place a projection and groove on the adjustable pier in Drake in order to prevent unwanted rotation of the upper member in relation to the lower member.

Claim 8: Drake in view of Zimmerman discloses the projection as received in the groove (Zimmerman Fig. 1).

Claim 9: Drake in view of Zimmerman discloses the claimed invention except for the dimensions of the projection and groove. It would have been obvious at the time the invention was made to a person having ordinary skill in the art as a matter of design choice to have these limitations because Applicant did not state a criticality for the necessity of this

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limitation and the prior art of record is capable of meeting the limitation.

**Claims 10, 11, 16, 17 and 19** are rejected under 35 U.S.C. 103(a) as being unpatentable over Drake in view of Stiles (U.S. Patent No. 6,324,795).

Claim 10: Drake discloses the claimed invention except for a metallic bearing device coupled on the upper support of the structure. Stiles disclose a system with a metallic bearing device (Fig. 1a) coupling an upper support member to a structure. It would have been obvious at the time the invention was made to a person having ordinary skill in the art to place a bearing member on the pier system in Drake because it is well known in the art to use a pin-connection system in such attachments in order to prevent unwanted resistances which would result in damage of the system.

Claim 11: Drake in view of Stiles discloses the device has a lower and upper section (Stiles 7, 9), the lower and upper sections are coupled to the support member and structure respectively, and the connections are hingedly intercoupled.

Claim 16: Drake discloses an adjustable support system (Drake Fig. 1) having an adjustable pier with upper and lower support members (106 and 104, 124, respectively), the lower



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support member defines an internal chamber (114) for receiving the upper support member, the lower support member has an opening (120) for providing lateral access to the internal chamber from outside the lower support member. While the opening has a height (see "A" from attached Figure 1 from Drake, above), Drake does not disclose that the height is at least 50% of the maximum height of the upper support member. It would have been obvious at the time the invention was made to a person having ordinary skill in the art as a matter of design choice to have this limitation because Applicant did not state a criticality for the necessity of this limitation and the prior art of record is capable of being designed to meet the limitation as claimed. Drake also does not disclose the pier is mounted on a base member nor a bearing device coupled to the upper section and a building structure, where the bearing device has upper and lower sections that are hingedly intercoupled. Stiles discloses a base member (Fig. 1A: 3) in soil with a bearing member having a lower section (7) connected to the top of the base and an upper portion (9) connected to a building structure (1). It would have been obvious at the time the invention was made to a person having ordinary skill in the art to attach the pier in Drake to a base in order to stabilize the pier. Further, it would have been obvious at the time the

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invention was made to a person having ordinary skill in the art to place a bearing member as in Stiles on the pier in Drake when connecting it to structure because it is well known in the art to use a pin-connection system in such attachments in order to prevent unwanted resistances which would result in damage of the system.

Claim 17: Drake discloses the claimed invention except for the height of the opening. It would have been obvious at the time the invention was made to a person having ordinary skill in the art as a matter of design choice to have the height of the opening as claimed because Applicant did not state a criticality for the necessity of the invention and the prior art of record is capable of meeting the limitation as claimed.

Claim 19: the lower member surrounds the upper member on at least three sides (side proximate 117, 112 and side indicated by 106).

**Claim 15** are rejected under 35 U.S.C. 103(a) as being unpatentable over Drake in view of Sumner (U.S. Patent No. 6,748,717).

Claim 15: Drake discloses the claimed invention except that the structure is a residential home and the base is a spread footing. Sumner discloses a pier system where the base is a

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spread footing (Fig. 6: 120) and the structure is a home (100). It would have been obvious at the time the invention was made to a person having ordinary skill in the art to use the pier in Drake in combination with a spread footing and home because the pier in Drake has many uses and can be used in conjunction with a footing and home.

**Claims 24-26, 28-31 and 35 are rejected under 35**

U.S.C. 103(a) as being unpatentable over Drake in view of Hebant and Sumner.

Claim 24: Drake discloses a method for leveling using an adjustable pier (Fig. 1), where the pier has telescopically intercoupled upper and lower members (106 and 104, 124 respectively) by extending the pier and inserting a stop member (116) between the upper and lower support members. Drake does not disclose using the pier in combination with a building nor raising the building structure to extend the pier. Sumner discloses a leveling method involving a building structure (Sumner: 100). It would have been obvious at the time the invention was made to a person having ordinary skill in the art to use the pier in Drake as claimed as an obvious method of use because the purpose of the pier is to function as a leveling mechanism and one of ordinary skill in the art would use the

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pier in Drake in such a manner. Further, one of ordinary skill in the art would raise the structure prior to installing the pier in order to provide access for installation. Further, the prior art of record discloses the claimed invention except that the stop member is a curable grout, though the stop member can be a number of items from fluids to sand, to any substance based on the specific parameters (Col. 5, lines 30-49). Hebant discloses an adjustable pier system where the stop member (18) is a grout (Col.4 lines 20-25 where cement and mortar are types of grout). It would have been obvious at the time the invention was made to a person having ordinary skill in the art to use grout with the pier system in Drake in order to permanently set the adjustable pier and the disclosure in Drake permits a number of materials to be used based on the circumstances.

Claim 25: the prior art of record does not specifically disclose exerting a sufficient force to raise the building structure and removing the force so the building is supported by the pier. It would have been obvious at the time the invention was made to a person having ordinary skill in the art to raise the pier prior to installation so one could access the area where the pier will be placed and then lower the structure so the pier supports the structure.

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Claim 26: Drake in view of Sumner does not disclose that the force exerted would be at a location spaced from the pier. It would have been obvious at the time the invention was made to a person having ordinary skill in the art to exert the force at a location separate from the pier because if the force were exerted at the location of the pier, the pier could not be properly installed.

Claim 28: The prior art of record does not disclose curing the grout before lowering the structure to be supported by the pier. It would have been obvious at the time the invention was made to a person having ordinary skill in the art to cure the grout before lowering the structure to allow the grout to cure properly.

Claim 29: Drake disclose the lower support member has an internal chamber (114) receiving at least a portion of the upper support member, and the lower support member has a lateral opening for permitting access to the internal chamber.

Claim 30: Drake discloses the stop member (116) would be inserted through the lateral opening.

Claim 31: Hebant discloses a pier system where the stop member is a curable grout (Col. 4, lines 20-25: grout is a type or mortar). It would have been obvious at the time the invention was made to a person having ordinary skill in the art

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to use grout with the system in Drake in view of Sumner because Drake discloses that numerous fillers may be used (Col. 5, lines 30-50) and grout would qualify as the stop member.

Claim 35: Drake in view of Hebant and Sumner discloses the base is a spread footing (Sumner 120).

**Claim 20** is rejected under 35 U.S.C. 103(a) as being unpatentable over Drake in view of Stiles, Sumner and Zimmerman.

Claim 20: Drake in view of Stiles discloses the claimed invention except for the shape of the pier and the projection-and-groove association of the inner and outer surfaces. Sumner discloses an adjustable pier where a lower portion has a pair of inwardly facing surfaces (Fig. 5) and an upper support member has a pair of outwardly facing surfaces (Fig. 7, proximate "Y"). It would have been obvious at the time the invention was made to a person having ordinary skill in the art to change the shape of the pier in Drake because a change in shape is within the level of ordinary skill in the art absent persuasive evidence that the particular configuration is significant (see M.P.E.P.

2144.04(IV) (B). Zimmerman discloses an adjustable pier (Fig. 1) where the upper and lower portions (18 and 12, respectively) have a projection-and-groove relationship (15, the groove is received by 15). It would have been obvious at the time the

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invention was made to a person having ordinary skill in the art to place a projection-and-groove on the upper and lower members in Drake in order to restrict unwanted lateral movement of the upper portion in relation to the lower portion.

**Claims 21 and 22** are rejected under 35 U.S.C. 103(a) as being unpatentable over Drake in view of Stiles and Hebant.

Claim 21: Drake in view of Stiles discloses the claimed invention except that the stop member is a cured grout, though the stop member can be a number of items from fluids to sand, to any substance based on the specific parameters (Col. 5, lines 30-49). Hebant discloses an adjustable pier system where the stop member (18) is a grout (Col.4 lines 20-25 where cement is a type of grout). It would have been obvious at the time the invention was made to a person having ordinary skill in the art to use grout with the pier system in Drake in order to permanently set the adjustable pier and the disclosure in Drake permits a number of materials to be used based on the circumstances.

Claim 22: Drake in view of Stiles discloses the claimed invention including that the bearing plate is metal (Stiles), and that the base member is concrete (Stiles), but it does not disclose that the pier is concrete. Hebant discloses a concrete

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pier (Hebant: Col.2, line 16). It would have been obvious at the time the invention was made to a person having ordinary skill in the art to make the pier in Drake of concrete because Drake discloses that the pier can be made of any suitable material (Drake: Col. 4 lines 20-23), and concrete would perform properly with the pier in Drake.

**Claim 23** is rejected under 35 U.S.C. 103(a) as being unpatentable over Drake in view of Stiles and Sumner.

Claim 23: Drake in view of Stiles discloses the claimed invention except that the structure is a home and the base member is a spread footing. Sumner discloses a pier system with the base as a spread footing (120) and the structure is a home (100). It would have been obvious at the time the invention was made to a person having ordinary skill in the art to use the system in Drake in view of Stiles in conjunction with a home and spread footing because the pier in Drake in view of Stiles has numerous uses and one of ordinary skill in the art would use the system in such a manner.

**Claims 32 and 33** are rejected under 35 U.S.C. 103(a) as being unpatentable over Drake in view of Hebant, Stiles and Sumner.



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Claim 32: the prior art of record discloses the claimed invention except that the lower support is coupled to the base and the upper support is coupled to the building prior to lifting the structure. It would have been obvious at the time the invention was made to a person having ordinary skill in the art as have the pier attached in this manner because one of ordinary skill in the art would clearly attach the support member to the base and structure, and once the structure is lifted, the upper member would move with the building.

Claim 33: Drake in view of Sumner discloses the claimed invention except for a bearing device. Stiles discloses a bearing device for coupling the upper support to a building, the bearing device has an upper portion (9) coupled to the building (1) and a lower portion (7) coupled to the support, and the connection is hingedly coupled (11). It would have been obvious at the time the invention was made to a person having ordinary skill in the art to use a bearing member with the pier system because it is well known in the art to use these systems to prevent unwanted resistances which would damage the structure.

**Claims 12-14** are rejected under 35 U.S.C. 103(a) as being unpatentable over Drake in view of Sumner and Zimmerman.

Claims 12-14: Drake discloses the claimed invention except for the shape of the pier and the projection-and-groove association of the inner and outer surfaces. Sumner discloses an adjustable pier where a lower portion has a pair of inwardly facing surfaces (Fig. 5) and an upper support member has a pair of outwardly facing surfaces (Fig. 7, proximate "Y"). It would have been obvious at the time the invention was made to a person having ordinary skill in the art to change the shape of the pier in Drake because a change in shape is within the level of ordinary skill in the art absent persuasive evidence that the particular configuration is significant (see M.P.E.P. 2144.04(IV)(B)). Zimmerman discloses an adjustable pier (Fig. 1) where the upper and lower portions (18 and 12, respectively) have a projection-and-groove relationship (15, the groove is received by 15). It would have been obvious at the time the invention was made to a person having ordinary skill in the art to place a projection-and-groove on the upper and lower members in Drake in order to restrict unwanted lateral movement of the upper portion in relation to the lower portion.

**Claim 34** is rejected under 35 U.S.C. 103(a) as being unpatentable over Drake in view of Hebant, Sumner and Zimmerman.

Claim 34: the prior art of record discloses the claimed invention except that one of the upper and lower support members has a projection and the other member has a groove to receive a portion of the projection. Zimmerman discloses an adjustable pier (Fig. 1) where the lower portion has a laterally extending projection (15) and the upper portion has a groove (portion that receives 15). It would have been obvious at the time the invention was made to a person having ordinary skill in the art to place a projection and groove on the adjustable pier in Drake in order to prevent unwanted rotation of the upper member in relation to the lower member.

***Allowable Subject Matter***

3. **Claim 18** is objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims.

***Response to Arguments***

4. The following addresses Applicant's Arguments/Remarks dated 07 August 2007.

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Applicant's arguments with respect to the 35 U.S.C. §112 arguments (Remarks: page 10) are persuasive and the rejection is withdrawn.

Applicant's arguments filed 07 August 2007 have been fully considered but they are not persuasive.

Regarding the argument to Independent Claim 1 (remarks: page 11), the argument is not persuasive because the lower support member in the prior art of record (Drake, cited above) is capable of receiving the upper member (106). Second, the access (Drake: 120) is still a lateral access as claimed (see rejection above) and does not claim around the prior art of record.

Regarding the argument that it would not be obvious to modify the structure in Drake with a substance that would become rigid (page 12, last paragraph), the Applicant respectfully disagrees in that the Drake reference notes that other filler materials may be used (column 5, lines 40-50) and that "different flow characteristics of granulated solid particles...may be beneficial over liquid filler material in some applications" (cited above). The Examiner contends that the references cited above meet the limitations in that the grout

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material is fluid upon entering the chamber, and, according to the Drake reference, could be beneficial in some applications.

Applicant's remarks addressing the newly amended subject matter is addressed in the Claims Rejection, above.

### ***Conclusion***

5. Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to William V. Gilbert whose telephone number is 571.272.9055. The examiner can normally be reached on Monday - Friday, 08:00 to 17:00 EST.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Richard Chilcot can be reached on 571.272.6777. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

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Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

WVG



RICHARD E. CHILCOT, JR.  
SUPERVISORY PATENT EXAMINER